IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 174 of 2004

Date of decision: June 19, 2007

Vijender Kumar **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. N.K. Thakur, Advocate.

For respondent : Mr. Som Dutt Vasudeva, Additional Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant has been convicted of an offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, for allegedly being in exclusive and conscious possession of 1.500 kgs. of *Charas* and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo simple imprisonment for a further period of two years.

3. The only submission that has been made on behalf of the appellant-convict is that the appellant was sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and

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Whether reporters of the local papers may be allowed to see the judgment?

Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 22.17 per cent, was resin and, hence, the appellant cannot be said to be in possession of 1.500 kgs. of *Charas*. He says that what was in possession of the appellant was not whole *Charas* but something which included *Charas* (resin) to the extent of 22.17 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken us through the report of the Chemical Examiner, per which the sample contained contents of *Charas.*

4. We find ourselves in agreement with the aforesaid submission of the learned counsel for the appellant. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Singh versus State of Himachal Pradesh and another appeal (Criminal Appeal No.491 & 510 of 2003),* decided on 15.5.2007. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

5. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 1.500 kgs. The Chemical Examiner has found resin contained in it to the extent of 22.17 per cent. That means, the *Charas*/resin contained in the recovered stuff was 332.55 grams. This quantity is less than the commercial quantity, as specified vide Notification No.S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished not under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, as done by the trial Court, but under Section 20(B) of the said Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin/*Charas* found in the stuff recovered from the appellant, we feel that the ends of justice would be met in case his sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to four years rigorous imprisonment and a fine of Rs.20,000/-, in default of payment of fine simple imprisonment for a further period of six months.

6. The appellant has been in custody since 1.4.2002. Thus, he has been in detention for a longer period than the sentence of substantive imprisonment awarded by this Court in appeal. In fact he has undergone imprisonment for a period more than the term of substantive imprisonment awarded hereby plus the imprisonment awarded in default of payment of fine. Therefore, it is ordered that

he be set at liberty forthwith, in case his detention is not required in any other case.

7. Appeal stands disposed of.

(Surjit Singh), J

June 19, 2007(sd) **(Kuldip Singh), J**